

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

TRUSTEES OF THE PLUMBERS AND GASFITTERS'  
LOCAL UNION NO. 12 WELFARE, PENSION, AND  
ANNUITY FUNDS; AND PLUMBERS AND  
GASFITTERS UNION LOCAL NO. 12

Plaintiffs

VS.

GERALD B. McHALE d/b/a KDL PLUMBING  
AND GERALD B. McHALE

Defendants

Civil Action No.  
05-11793 (NMG)

March 29, 2006

**APPLICATION TO THE CLERK OF THE COURT  
FOR ENTRY OF JUDGMENT BY DEFAULT**

Pursuant to Rule 55(b)(1) Fed.R.Civ.P., the above captioned Plaintiffs, by and through their attorneys, Robert M. Cheverie & Associates, P.C., hereby request the Clerk of this Court to enter judgment by default against Defendant Gerald B. McHale d/b/a KDL Plumbing (hereinafter "KDL Plumbing") for sums certain as demonstrated below.

1. Defendant KDL Plumbing is a Massachusetts corporation engaged in the plumbing construction business.
2. Defendant KDL Plumbing is party to a multi-employer Collective Bargaining Agreement ("CBA") with Plumbers and Gasfitters Local Union No. 12

(Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 3).

3. Defendant Gerald M. McHale is the principal of KDL Plumbing and is personal guarantor on the breached Settlement Agreement referenced in Paragraphs 10, 11, 12 and 15 below.

4. Pursuant to the terms of the relevant CBA, Defendant is contractually obligated to make fixed hourly rate payments to the Plaintiffs of sums certain for each hour worked by plumbers/apprentices employed to perform plumbing work on KDL Plumbing's contracted projects (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 5).

5. Pursuant to the terms of the CBA, each month KDL Plumbing must forward to the Plaintiffs' Fund Administrator a monthly report detailing the name of each plumber/apprentice in its employ for the prior month, the hours worked by each plumber/apprentice, and the Funds contributions owed on behalf of each employed plumber/apprentice (i.e. the product of the contractually fixed hourly Funds rates, multiplied by the hours worked) (See Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 6).

6. KDL Plumbing submitted a Funds Report for plumbing work performed on contracted projects during the months of October, November, and December 2004 demonstrating Funds contributions owed to Plaintiffs in the sum certain amount of ***Thirty-Four Thousand Five Hundred Forty-Two Dollars and Fifty-Four Cents***

**(\$34,542.54).**(See Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 8).

6. Pursuant to the terms of the CBA, a late fee charge of one percent (1%) per month of the unpaid delinquent contributions is assessed a signatory contractor delinquent in submitting monthly Funds contribution payments (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 7).

8. Gerald B. McHale d/b/a KDL Plumbing failed to pay monthly Funds contributions for the months of October, November and December 2004 in the respective amounts **\$11,591.34**, **\$11,400.72**, and **\$11,550.48**, for a total three (3) month delinquency, according to the KDL monthly reports, of **\$34,542.54**. These delinquencies are undisputed and are based upon monthly reports submitted to the Funds by Gerald B. McHale d/b/a KDL Plumbing (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 8).

9. Gerald B. McHale d/b/a KDL Plumbing failed to pay monthly late fee charges on delinquent contributions that accrued during the period of August 2003 through December 2004 in the amount of **\$2,452.98** (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 9).

10. In order to pay the Funds the delinquent monthly contributions and late fees referenced in Paragraphs 9 and 10 above, Gerald B. McHale d/b/a KDL Plumbing and Gerald B. McHale personally, entered into a Settlement Agreement with the Funds to pay all of the October, November and December 2004 delinquencies and accrued

late charges totaling **\$36,995.52**, plus interest in eighteen (18) monthly payments beginning February 1, 2005 and ending August 1, 2006. In exchange for Gerald B. McHale d/b/a KDL Plumbing entering into this Settlement Agreement, the Funds withdrew Civil Action No. 04-11622-GAO, a collections lawsuit filed by the Funds against KDL Plumbing (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 10).

11. Gerald B. McHale d/b/a KDL Plumbing paid the first eight (8) monthly payments pursuant to the Settlement Agreement but has failed to make any payments since October 21, 2005 and, therefore, owes the remaining portions of the November and December 2004 delinquencies and late fees, and interest in the **sum certain** amount of **\$22,256.03** (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 11).

12. Pursuant to the Settlement Agreement referenced in Paragraphs 9 and 10 above, when timely payment is not received, the Funds are entitled to demand the remaining unpaid portion plus accrued interest and pursue legal actions against the Company, KDL Plumbing, and Gerald B. McHale, the Guarantor of the Settlement Agreement, for the unpaid Funds delinquencies, late fees, interest, costs and attorney's fees (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 12).

13. The sum certain costs for filing the ERISA collection Complaint and serving the Summons and Complaint upon Gerald B. McHale d/b/a KDL Plumbing and

Gerald B. McHale total **\$332.66** and the attorney's fees associated with this action total **\$1,520.00** (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 13).

14. Gerald B. McHale d/b/a KDL Plumbing was delinquent for monthly contributions owed, in year 2005 and pursuant to the Collective Bargaining Agreement, accrued late fee charges at the rate of one percent (1%) per month of the unpaid Funds delinquency. Although the year 2005 monthly delinquencies were ultimately paid by KDL, the late fees that accrued on those delinquencies remain unpaid and owing. As of March 1, 2006, Gerald B. McHale d/b/a KDL Plumbing owed the sum certain amount of **\$1,401.16** for contractual late fee charges accrued on monthly delinquencies from January 1, 2005 through July 31, 2005 (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 14).

15. The Settlement Agreement referenced above in Paragraph 10, to which Gerald B. McHale signed as guarantor, provided that Gerald B. McHale d/b/a KDL Plumbing would remain current in its monthly obligations to the Funds (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 15).

16. In summation, Gerald B. McHale d/b/a KDL Plumbing and Gerald B McHale personally, as guarantor to the Settlement Agreement, owe the **sum certain** amounts as follows:



Remaining unpaid Year 2004 delinquencies and late fees, the subject of Settlement Agreement referenced in ¶¶s 10 & 11:	<b>\$22,256.03</b>
The unpaid year 2005 late fees referenced in ¶ 14:	<b>\$1,401.16</b>
The cost of filing the instant litigation referenced in ¶ 13	<b>\$332.66</b>
The Attorney's Fees referenced in ¶ 13	<b><u>\$1,520.00</u></b>
<b>TOTAL</b>	<b><u>\$25,509.85</u></b>

(Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator 16.)

16. Defendant Gerald B. McHale d/b/a KDL Plumbing is neither an infant nor incompetent nor in the military service of the United States (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 17).

17. Defendant Gerald B. McHale is neither an infant nor incompetent nor in the military service of the United States (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 17).

18. Plaintiffs rely on the attached Memorandum of Law.

Respectfully submitted,

Robert M. Cheverie, Esq.  
ROBERT M. CHEVERIE &  
ASSOCIATES, P.C.  
333 East River Drive, Suite 101  
East Hartford, CT 06108  
(860) 290-9610  
BBO# 082320

  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **APPLICATION TO THE CLERK OF THE COURT FOR ENTRY OF JUDGMENT BY DEFAULT** has been mailed, first-class and postage prepaid, this 29<sup>th</sup> day of March 2006 to the following:

Gerald B. McHale  
d/b/a KDL PLUMBING  
70 Foxboro Street  
Sharon, MA 02067

Gerald B. McHale  
70 Foxboro Street  
Sharon, MA 02067



Robert M. Cheverie

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'  
LOCAL UNION NO. 12 WELFARE, PENSION, AND  
ANNUITY FUNDS; AND PLUMBERS AND  
GASFITTERS UNION LOCAL NO. 12

Plaintiffs

VS.

GERALD B. McHALE d/b/a KDL PLUMBING  
AND GERALD B. McHALE

Defendants

Civil Action No.  
05-11793 (NMG)

March 29, 2006

ORDER  
FOR ENTRY OF JUDGMENT BY DEFAULT

Defendants Gerald M. McHale d/b/a KDL Plumbing and Gerald B. McHale, having not appeared, answered, or defended in this action and the Court having allowed the Notice of Default to issue by Order dated March 21, 2006.

Now, upon application of the Plaintiffs and Affidavits demonstrating that Defendant owes Plaintiffs the sum certain of ***Twenty-Two Thousand Two Hundred Fifty-Six Dollars and Three Cents (\$22,256.03)*** for delinquent Trust Funds contributions, the subject of a breached Settlement Agreement balance; ***One Thousand Four Hundred One Dollars and Sixteen Cents (\$1,401.16)*** in unpaid late fees; that Defendant is not an infant or incompetent person or in the military service of the United States; and that Plaintiffs have incurred costs in the amount of ***Three***



**Hundred Thirty-Two Dollars and Sixty-Six Cents (\$332.66)**, and attorney's fees in the amount of **One Thousand Five Hundred Twenty Dollars (\$1,520.00)**, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiffs recover from Defendants Gerald B. McHale d/b/a KDL Plumbing and Gerald B. McHale jointly and severally the Settlement Agreement balance in the amount of **\$22,256.03**, late fees in the amount of **\$1,401.16**, costs in the amount of **\$332.66**, and attorney's fees in the amount of **\$1,520.00**, for a total judgment of **\$25,509.85**.

Plaintiffs may also recover post-judgment interest as provided by law.

By the Court,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk

# **ATTACHMENT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**TRUSTEES OF THE PLUMBERS AND GASFITTERS'  
LOCAL UNION NO. 12 WELFARE, PENSION, AND  
ANNUITY FUNDS; AND PLUMBERS AND  
GASFITTERS UNION LOCAL NO. 12**

Plaintiffs

VS.

**GERALD B. McHALE d/b/a KDL PLUMBING  
AND GERALD B. McHALE**

Defendants

Civil Action No.  
**05-11793 (NMG)**

March 27, 2006

**AFFIDAVIT OF ROGER B. GILL**

The undersigned, Roger B. Gill, being duly sworn, hereby deposes and states:

1. I am over the age of eighteen (18) years and understand the meaning and obligation of an oath.
2. I am employed by the Trustees of the Plumbers and Gasfitters' Local Union No. 12 Welfare, Pension, and Annuity Funds (the "Funds") as the Administrator of the Funds. As such, I am personally familiar with the facts stated herein.
3. At all relevant times, Gerald B. McHale d/b/a KDL Plumbing was and is signatory to a Collective Bargaining Agreement with Plumbers and Gasfitters Union Local No. 12.

4. Gerald B. McHale d/b/a KDL Plumbing employed plumbers covered by the Collective Bargaining Agreement during the time of October 1, 2004 through July 31, 2005.

5. Pursuant to the Collective Bargaining Agreement, Gerald B. McHale d/b/a KDL Plumbing agreed to pay the Funds certain sums at rates identified in the Collective Bargaining Agreement for each hour worked by plumbing/apprentice employees of Gerald B. McHale d/b/a KDL Plumbing.

6. Pursuant to the Collective Bargaining Agreement, Gerald B. McHale d/b/a KDL Plumbing agreed to submit a Funds report each month, detailing the names of its covered employees, the hours worked by each covered employee, and the Funds contributions owed in total for each month.

7. Pursuant to the Collective Bargaining Agreement, Gerald B. McHale d/b/a KDL Plumbing agreed to pay a late fee charge of one percent (1%) per month on any monthly delinquency not paid in a timely fashion as provided in the Collective Bargaining Agreement.

8. Gerald B. McHale d/b/a KDL Plumbing failed to pay monthly Funds contributions for the months of October, November and December 2004 in the respective amounts **\$11,591.34**, **\$11,400.72**, and **\$11,550.48**, for a total three (3) month delinquency, according to the KDL monthly reports, of **\$34,542.54**. These delinquencies are undisputed and are based upon monthly reports submitted to the Funds by Gerald B. McHale d/b/a KDL Plumbing.

9. Gerald B. McHale d/b/a KDL Plumbing failed to pay monthly late fee charges on delinquent contributions that accrued during the period of August 2003 through December 2004 in the amount of **\$2,452.98**.

10. In order to pay the Funds the delinquent monthly contributions and late fees referenced in Paragraphs 8 and 9 above, Gerald B. McHale d/b/a KDL Plumbing and Gerald B. McHale personally, entered into a Settlement Agreement with the Funds to pay all of the October, November and December 2004 delinquencies and accrued late charges totaling **\$36,995.52**, plus interest in eighteen (18) monthly payments beginning February 1, 2005 and ending August 1, 2006. In exchange for Gerald B. McHale d/b/a KDL Plumbing entering into this Settlement Agreement, the Funds withdrew Civil Action No. 04-11622-GAO, a collections lawsuit filed by the Funds against KDL Plumbing.

11. Gerald B. McHale d/b/a KDL Plumbing paid the first eight (8) monthly payments pursuant to the Settlement Agreement but has failed to make any payments since October 21, 2005 and, therefore, owes the remaining portions of the November and December 2004 delinquencies and late fees, and interest in the **sum certain** amount of **\$22,256.03**.

12. Pursuant to the Settlement Agreement referenced in Paragraphs 10 and 11 above, when timely payment is not received, the Funds are entitled to demand the remaining unpaid portion plus accrued interest and pursue legal actions against the Company, KDL Plumbing, and Gerald B. McHale, the Guarantor of the Settlement Agreement, for the unpaid Funds delinquencies, late fees, interest, costs and attorney's fees.

13. The sum certain costs for filing the ERISA collection Complaint and serving the Summons and Complaint upon Gerald B. McHale d/b/a KDL Plumbing and Gerald B. McHale total **\$332.66** and the attorney's fees associated with this action total **\$1,520.00**.

14. Gerald B. McHale d/b/a KDL Plumbing was delinquent for monthly contributions owed, in year 2005 and pursuant to the Collective Bargaining Agreement, accrued late fee charges at the rate of one percent (1%) per month of the unpaid Funds delinquency. Although the year 2005 monthly delinquencies were ultimately paid by KDL, the late fees that accrued on those delinquencies remain unpaid and owing. As of March 1, 2006, Gerald B. McHale d/b/a KDL Plumbing owed the sum certain amount of **\$1,401.16** for contractual late fee charges accrued on monthly delinquencies from January 1, 2005 through July 31, 2005.

15. The Settlement Agreement referenced above in Paragraph 10, to which Gerald B. McHale signed as guarantor, provided that Gerald B. McHale d/b/a KDL Plumbing would remain current in its monthly obligations to the Funds.

16. In summation, Gerald B. McHale d/b/a KDL Plumbing and Gerald B. McHale personally, as guarantor to the Settlement Agreement, owe the **sum certain** amounts as follows:

Remaining unpaid Year 2004 delinquencies and late fees, the subject of Settlement Agreement referenced in ¶¶ 10 & 11:	<b>\$22,256.03</b>
The unpaid year 2005 late fees referenced in ¶ 14:	<b>\$1,401.16</b>
The cost of filing the instant litigation referenced in ¶ 13	<b>\$332.66</b>
The Attorney's Fees referenced in ¶ 13	<b><u>\$1,520.00</u></b>
<b>TOTAL</b>	<b>\$25,509.85</b>

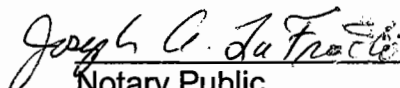


17. Defendant Gerald B. McHale d/b/a KDL Plumbing is neither an infant nor incompetent nor in the military service of the United States.

DATED this 27<sup>th</sup> day of March 2006, at Boston, Massachusetts.

  
\_\_\_\_\_  
Roger B. Gill, Funds Administrator

Subscribed and sworn to before me this 27<sup>th</sup> day of March 2006.

  
\_\_\_\_\_  
Notary Public  
11/15/07

# **ATTACHMENT B**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

TRUSTEES OF THE PLUMBERS AND GASFITTERS'  
LOCAL UNION NO. 12 WELFARE, PENSION, AND  
ANNUITY FUNDS; AND PLUMBERS AND  
GASFITTERS UNION LOCAL NO. 12

Plaintiffs

VS.

GERALD B. McHALE d/b/a KDL PLUMBING  
AND GERALD B. McHALE

Defendants

Civil Action No.  
05-11793 (NMG)

March 29, 2006

**DECLARATION OF JOHN T. FUSSELL**

I, JOHN T. FUSSELL, of Robert M. Cheverie & Associates, P.C., counsel of record for Plaintiffs, Trustees of Plumbers and Gasfitters' Local Union No. 12 Welfare, Pension and Annuity Funds (hereinafter the "Funds"), hereby certify, declare and verify under penalty of perjury, pursuant to 28 U.S.C. 1746, this 29<sup>th</sup> day of March 2006, the following:

1. I am an attorney with the law firm of Robert M. Cheverie & Associates, P.C., the counsel of record for Plaintiffs.
2. I have reviewed the governing Collective Bargaining Agreement, the Plan Documents of the Plaintiff Funds, as well as the Settlement Agreement entered into by

Gerald B. McHale d/b/a KDL Plumbing and guaranteed by Gerald B. McHale personally. Consistent with the terms of those documents, the Funds are entitled to payment from Gerald B. McHale d/b/a KDL Plumbing and Gerald B. McHale of the delinquent Settlement Agreement balance in the sum certain amount of **\$22,256.03**. Likewise, consistent with the terms of the aforementioned documents, the Funds are entitled to payment of late fee charges on delinquent contributions at the rate of one percent (1%) per month of the unpaid delinquency balance. As of March 1, 2006, the Funds were owed the sum certain amount of **\$1,401.16** in late fees that accrued on delinquent contributions from year 2005.

3. The governing documents, including the Collective Bargaining Agreement and the Plan Documents, provide that in the event litigation becomes necessary to collect delinquent Funds contributions and late fees, a delinquent contractor shall be liable for the expense of such collection action including the Funds' attorney's fees and costs.

4. The law firm of Robert M. Cheverie & Associates, P.C. expended eight (8) hours in the above-captioned case on behalf of the Plaintiffs in drafting and filing the Complaint, and drafting the Motion for Default and drafting the documents in connection with the instant Entry for Judgment by Default.

5. The amount of time expended is within the usual and customary time spent for an attorney on this type of case.

6. Robert M. Cheverie & Associates, P.C. has negotiated a fee of One Hundred Ninety Dollars (\$190.00) per hour for attorney time with its clients for the performance of this type of legal representation. We believe that this hourly fee is at or below the usual and customary fee charged for this type of work.


7. Plaintiff's counsel respectfully requests the Court to grant Plaintiffs' attorney fees in the amount of **\$1,520.00**.

8. This law firm has incurred costs of **\$332.66** to prosecute this action. Specifically, **\$250.00** was incurred to file the Complaint and **\$82.66** was incurred to have the Summons and Complaint served upon the Defendant by the Sheriff's Office.

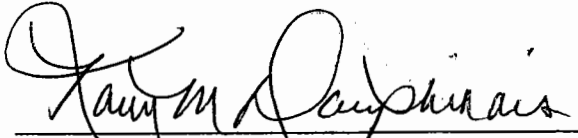
9. Defendant Gerald B. McHale d/b/a KDL Plumbing is neither an infant nor incompetent nor in the military service of the United States.

10. Defendant Gerald B. McHale is neither an infant nor incompetent nor in the military service of the United States.

DATED this 29<sup>th</sup> day of March 2006, at East Hartford, Connecticut.

  
John T. Fussell

Subscribed and sworn to before me this 29<sup>th</sup> day of March 2006.

  
Notary Public

**KAREN M. DAUPHINAIS**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES JULY 31, 2007